

Clifford S. Davidson, OSB No. 125378
cdavidson@sussmanshank.com
SUSSMAN SHANK LLP
1000 SW Broadway, Suite 1400
Portland, OR 97205-3089
Telephone: (503) 227-1111
Facsimile: (503) 248-0130

Linda M. Burrow, *pro hac vice forthcoming*

burrow@caldwell-leslie.com

Jeffrey M. Hammer, *pro hac vice forthcoming*

hammer@caldwell-leslie.com

CALDWELL LESLIE & PROCTOR, PC
725 South Figueroa Street, 31st Floor
Los Angeles, California 90017-5524
Telephone: (213) 629-9040
Facsimile: (213) 629-9022

Attorneys for TWENTIETH CENTURY FOX
FILM CORPORATION

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON
MEDFORD DIVISION

**TWENTIETH CENTURY FOX FILM
CORPORATION, a Delaware corporation**

Plaintiff,

Case No. 1:13-cv-01785

**COMPLAINT FOR FEDERAL
COPYRIGHT INFRINGEMENT**

v.

**THE ROGUE THEATRE, INC., an Oregon
nonprofit corporation,**

Defendant.

NATURE OF ACTION

1. Plaintiff Twentieth Century Fox Film Corporation (“Fox”) owns the copyright in the 1975 cult classic film *The Rocky Horror Picture Show* (the “Film”). *The Rocky Horror Picture Show* is a musical comedy and horror film that is perhaps best known for the audience participation that often accompanies screenings of the Film, with audience members dressing like characters and performing along with the Film. Nearly forty years after its release, *The Rocky Horror Picture Show* continues to generate substantial revenues and has been selected by the Library of Congress for preservation in the United States National Film Registry.

2. Defendant The Rogue Theatre, Inc. (“Rogue”) is a theatre located in Grants Pass, Oregon, that is currently selling tickets to a screening of the Film on October 25 and 26, 2013, and that has screened the Film in the past for financial gain. Fox has never granted a license to or otherwise authorized Rogue to exhibit the Film. To the contrary, Fox has warned Rogue that its exhibition of the Film infringes Fox’s copyright in the Film, and has demanded that Rogue cease its infringing conduct. Despite these warnings, Rogue continues to sell tickets to the Film’s upcoming exhibition and continues to promote the unlicensed screening of the Film. Fox thus brings this action to protect its valuable rights.

PARTIES

3. Twentieth Century Fox Film Corporation is a Delaware corporation with its principal place of business in Los Angeles, California.

4. The Rogue Theatre, Inc. is an Oregon nonprofit corporation with its principal place of business in Grants Pass, Oregon.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over a claim for copyright infringement pursuant to 17 U.S.C. § 101 *et seq.*, under 28 U.S.C. §§ 1331 and 1338.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1400(a) because Rogue resides in this District and because a substantial part of the events giving rise to the claims occurred in this District.

7. This complaint has been filed in the Medford Division pursuant to Local Rule 3-2, because a substantial part of the events giving rise to the claims occurred in Grants Pass, Oregon.

FACTUAL BACKGROUND

8 Fox is the sole owner of the copyright in the Film, which was originally registered on September 26, 1975, and which was renewed effective August 8, 2008 with a renewal number of 884-640. A true and correct copy of Fox's renewal certificate is attached hereto as Exhibit A.

9. Fox has never granted a license to or otherwise authorized Rogue to exhibit, advertise or promote the Film in any way.

10. Fox is informed and believes, and on the basis of that information and belief alleges, that Rogue engages in the unauthorized exhibition of the Film for several nights each year around Halloween, and promotes those exhibitions through advertisements, posters and flyers displayed at its location, and on its website. Fox first learned of Rogue's infringing conduct in or around October 2010, and promptly notified Rogue in writing that its exhibition of the Film infringed Fox's copyright in the Film. Rogue did not respond, and, on information and belief, proceeded with its scheduled

exhibition. Since 2010, Fox has repeatedly warned Rogue that any further exhibitions could subject Rogue to copyright liability. Despite these warnings, Rogue has refused to cease its infringing conduct.

11. According to its website, Rogue is currently selling tickets to unauthorized public exhibitions of the Film scheduled for October 25 and 26, 2013. Examples of Rogue's promotion of its upcoming unauthorized exhibition are attached as Exhibit B.

12. On September 19, 2013, Fox sent letters to Rogue's president, directors, and secretary, demanding that the theatre cease and desist its planned unauthorized exhibition of the Film. As of the filing of this complaint, Rogue has not responded to Fox's demand, but continues to promote its upcoming exhibition of the Film.

13. Rogue's conduct is causing, and unless immediately enjoined will continue to cause, irreparable harm to Fox. Rogue may not continue to exploit the Film without authorization and without compensation to Fox.

FIRST CLAIM FOR RELIEF

(COPYRIGHT INFRINGEMENT – 17 U.S.C. § 501 et seq.)

14. Fox incorporates by reference each and every allegation contained in paragraphs 1 through 13 above.

15. At all relevant times, Fox has owned and currently owns the copyright to the Film. Accordingly, Fox holds the exclusive right to authorize exhibitions of the Film.

16. Fox has never granted a license to or otherwise authorized Rogue to exhibit the Film.

17. Rogue has infringed Fox's copyright, and further threatens to infringe Fox's copyright by exhibiting the Film on October 25 and 26, 2013, in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

18. Rogue's acts of infringement are willful, intentional and purposeful, in disregard of and with indifference to Fox's rights.

19. Rogue's acts of infringement have caused Fox to suffer pecuniary damages as well as irreparable injury and loss of reputation for which Fox has no adequate remedy at law. Fox is therefore entitled to monetary damages in an amount to be proven at trial, as well as preliminary and permanent injunctive relief prohibiting Rogue from further exhibiting the Film.

PRAYER

WHEREFORE, Fox prays for judgment against Rogue as follows:

1. Pursuant to 17 U.S.C. § 502, that Rogue and each of its agents, servants, employees, attorneys, officers, and all others in privity and acting in concert with Rogue be preliminarily and permanently enjoined from exhibiting the Film or otherwise infringing Fox's copyright in the Film.

2. Pursuant to 17 U.S.C. § 504, that Rogue account and pay to Fox damages in an amount sufficient to fairly compensate it for the injury it has sustained, plus all the profits attributable to Rogue's infringement of the copyright in the Film, and further that the amount of the monetary award granted herein be increased by \$150,000 in view of the willful and deliberate nature of Rogue's unlawful conduct.

3. Pursuant to 17 U.S.C. § 505, that Rogue be ordered to pay to Fox the costs of this action and Fox's attorneys' fees.

4. Such other, further, different or additional relief as this Court deems equitable and proper.

Dated this 7th day of October, 2013.

SUSSMAN SHANK LLP

By /S/ Clifford S. Davidson
Clifford S. Davidson, OSB No. 125378
Attorneys for Plaintiff

EXHIBIT A

CERTIFICATE OF REGISTRATION

OFFICIAL SEAL

This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

REGISTER OF COPYRIGHTS
United States of America
1901-1958

FORM RE
For Renewal of a Work
UNITED STATES COPYRIGHT OFFICE

RE 884-640



EFFLU LUN LV

AUG 08 2003

Month Day Year

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET(Re/CON)

RENEWAL CLAIMANT(S) ADDRESS(ES) AND STATEMENT OF CLAIM ▼ (See Instructions)**1**

| | |
|-------------|--|
| Name | Twentieth Century Fox Film Corporation |
| 1 Address | P O Box 900, Beverly Hills , CA 90213 |
| Claiming as | proprietor of copyright in a work made for hire (Use appropriate statement from instructions) |
| Name | |
| 2 Address | |
| Claiming as | |
| Name | |
| 3 Address | |
| Claiming as | |

TITLE OF WORK IN WHICH RENEWAL IS CLAIMED ▼**2**

THE ROCKY HORROR PICTURE SHOW

RENEWABLE MATTER ▼

Entire work

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical serial or other composite work give information about the collective work in which the contribution appeared Title of Collective Work ▼

If published in a periodical or serial give Volume ▼ Number ▼ Issue Date ▼

3**AUTHOR(S) OF RENEWABLE MATTER ▼**

Michael White Productions, Ltd

4**ORIGINAL REGISTRATION NUMBER ▼ ORIGINAL COPYRIGHT CLAIMANT ▼**

LP 45 461 Houtsnede Maatschappi N V

ORIGINAL DATE OF COPYRIGHT

If the original registration for this work was made in published form, give

DATE OF PUBLICATION September 26, 1975
(Month) (Day) (Year)

OR

If the original registration for this work was made in unpublished form, give

DATE OF REGISTRATION
(Month) (Day) (Year)

MORE ON BACK ▶ Complete all applicable spaces (numbers 5-8) on the reverse side of this page
See detailed instructions

Sign the form at space 7

DO NOT WRITE HERE
Page 1 of 1 pages

RENEWAL APPLICATION RECEIVED

FORM RE

AUG 08 2003

CORRESPONDENCE YesEXAMINED BY *Mary McGuire*

CHECKED BY

FUNDS RECEIVED

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE IF YOU NEED MORE SPACE USE A SEPARATE CONTINUATION SHEET (RE/CON)

RENEWAL FOR GROUP OF WORKS BY SAME AUTHOR To make a single registration for a group of works by the same individual author published as contributions to periodicals (see instructions) give full information about each contribution. If more space is needed request continuation sheet (Form RE/CON)

5

| Title of Contribution | | | Vol | No | Issue Date |
|-----------------------|---------------------|-------|--------|---------------------|------------|
| a | Title of Periodical | | | | |
| Date of Publication | (Month) | (Day) | (Year) | Registration Number | |
| Title of Contribution | | | | | |
| b | Title of Periodical | | | | |
| Date of Publication | (Month) | (Day) | (Year) | Registration Number | |
| Title of Contribution | | | | | |
| c | Title of Periodical | | | | |
| Date of Publication | (Month) | (Day) | (Year) | Registration Number | |
| Title of Contribution | | | | | |
| d | Title of Periodical | | | | |
| Date of Publication | (Month) | (Day) | (Year) | Registration Number | |

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office give name and number of Account

CORRESPONDENCE Give name and address to which correspondence about this application should be sent

Name Twentieth Century Fox Film CorporationName Mary McGuire 2121/731Account Number DA011185Address Fox Group Legal P O Box 900

(Apt)

Beverly Hills CA 90213Area code and daytime telephone number ► (310) 369 5159(City) (State) (ZIP) Fax number ► (310) 369 2382 Email Address ► CR@Fox.com

CERTIFICATION I the undersigned hereby certify that I am the (Check one)

 renewal claimant duly authorized agent of Twentieth Century Fox Film Corporation

(Name of renewal claimant)

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Typed or printed name ▼Mary McGuireDate ▼25 Jul 2003 Handwritten signature (X) ▼Mary McGuire

Certificate will be mailed in window envelope to this address

Name ▼ **Fox Group Legal**
Attn Mary McGuire (Bldg 2121 Room 731)

Number/Street/Apt ▼ **P O Box 900**

City/State/ZIP ▼ **Beverly Hills CA 90213**

CONTINUE
Complete all necessary spaces.
Save your application in space ?
NOTICE TO CLAIMANT
IN THE UNITED STATES
1 Application form
2 Nonrefundable filing fee
in check or money order
payable to
Register of Copyrights

Library of Congress
Copyright Office
101 Independence Ave S E
Washington D C 20580-6000

6

7

8

EXHIBIT B

The screenshot shows the website for the Historic Rogue Theatre. At the top, there's a banner with a photo of a concert stage and silhouettes of audience members. Below the banner, a logo with a stylized 'R' is on the left, followed by the text 'TICKETS BY PHONE 541 471.1316'. A navigation bar with links for HOME, CALENDAR, TICKETS, DONATE, STORE, LODGING, ABOUT US, and CONTACT follows. To the left, there's a sidebar with a 'GALLERY' section and a 'VIEW OUR SEATING CHART' link. In the center, a row of six event cards displays performances for October 4, 10, 11, 25, 26, and November 1. Below these cards, a message says 'click on the images for details and show times'. On the right, a 'Coming soon' section lists performances for Anna Nalick (Nov. 22), Jonny Lang (Jan. 14), and Leo Kottke (Mar. 20). Further down, a large 'RENT THE ROGUE' section with a 'click here' button is shown, along with a 'Friends Of The Rogue' section.

TICKETS BY PHONE
541 471.1316

HOME CALENDAR TICKETS DONATE STORE LODGING ABOUT US CONTACT

THE Historic ROGUE THEATRE
143 SE H Street
Grants Pass, Oregon

LIVE AT THE ROGUE

GALLERY
click to view images

JOE BONAMASA

VIEW OUR SEATING CHART
click here

LOCAL TICKET OUTLETS
click here

JOIN OUR EMAIL LIST

click on the images for details and show times

Coming soon

| | | |
|--------------------------------------|-------------------------------------|-------------------------------------|
| Anna Nalick Nov. 22 | Jonny Lang Jan. 14 | Leo Kottke Mar. 20 |
|--------------------------------------|-------------------------------------|-------------------------------------|

-THEATRE RENTAL-

RENT THE ROGUE
click here
EVENTS - CONCERTS - MOVIES

Friends Of The ROGUE

click to view



[Order Status](#)

Click logo above to return to the home page.

charge by phone: 541 471 1316

All event information is subject to change. Please check back before date of event.

Friday, October 04, 2013 8:00 PM

Dar Williams

Ticket Price:

\$40.00 - Platinum Seating
\$28.00 - Gold Seating
\$28.00 - General Admission

All Ages

General Admission & Reserved Seating

Thursday, October 10, 2013 8:00 PM

Greg Brown

Ticket Price:

\$45.00 - Platinum Seating
\$29.00 - Gold Seating
\$25.00 - General Admission

Reserved Seating and General Admission

Friday, October 11, 2013 8:00 PM

Marc Cohn

Ticket Price:

\$55.00 - Platinum Seating
\$35.00 - Gold Seating
\$25.00 - General Admission

All Ages

Reserved Seating & General Admission

Friday, October 25, 2013 8:00 PM

Rocky

Ticket Price:

\$10.00

All Ages

General Admission

Saturday, October 26, 2013 8:00 PM

Rocky

Ticket Price:

\$10.00

All Ages

General Admission

Friday, November 01, 2013 8:00 PM

Ticket Price:

\$20.00 General Admission

Floater

with Special Guest
Brother

All Ages

General Admission

[BUY TICKETS ONLINE](#)

Friday, November 22, 2013 8:00 PM

[MORE INFORMATION](#)

Anna Nalick

Ticket Price:

\$21.00

All Ages

General Admission

[BUY TICKETS ONLINE](#)

Tuesday, January 14, 2014 8:00 PM

[MORE INFORMATION](#)

Jonny Lang

Ticket Price:

\$65.00 - Platinum Seating

\$55.00 - Gold Seating

\$40.00 - General Admission

All Ages

General Admission

tix@musictoday.com | charge by phone: 541 471 1316

[privacy policy](#) | [user agreement](#) | [help](#)

POWERED BY **MUSICTODAY®**